TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 548.

WALTER A. EASTES, APPELLANT,

vs.

GEORGE F. CRUTCHLEY, COLLECTOR OF INTERNAL REVENUE FOR THE SIXTH DISTRICT OF MISSOURI, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

FILED SEPTEMBER 22, 1921.

(28,503)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., SEPTEMBER 23, 1921.

a UNITED STATES OF AMERICA, *sct:*

To George F. Crutchley, collector of internal revenue for the Sixth district of Missouri, and Shrader P. Howell, Federal prohibition director for the State of Missouri, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the City of Washington, D. C., thirty days from and after the day this citation bears date, pursuant to an appeal filed in the Clerks' Office of the District Court of the United States for the Western Division of the Western District of Missouri, wherein Walter A. Eastes is appellant, and you are appellees, to show cause, if any there be, why the judgment rendered against the appellant as in said appeal mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Arba S. Van Valkenburgh, Judge of the District Court of the United States for the Western Division of the Western District of Missuri, this 7th day of July in the year of our Lord one thousand nine hundred twenty-one.

ARBA S. VAN VALKENBURGH,
Judge.

UNITED STATES OF AMERICA,
Western Division of the Western District of Missouri, sct:

I hereby acknowledge due service of the within Citation this 8th day of July, A. D. 1921.

CHAS. C. MADISON,
Attorney for Appellees.

[Endorsed:] No. 276. United States District Court, Western District of Missouri, Western Division. Walter A. Eastes vs. George F. Crutchley, collector of internal revenue for the Sixth district of Missouri, et al. Citation. Filed Jul. 7, 1921. Edwin R. Durham, clerk. H. C. Spaulding.

1 UNITED STATES OF AMERICA, *sct:*

Be it remembered that heretofore at the regular April Term of the District Court of the United States for the Western Division of the Western District of Missouri, and on the 13th day of May, 1921, a Bill of Complaint was filed in the office of the Clerk in the case wherein Walter A. Eastes is Complainant, and George F. Crutchley, Collector of the Internal Revenue of the United States for the Sixth District of Missouri, and Shrader P. Howell, Federal Prohibition Director for the State of Missouri, are defendants.

Said Bill of Complainant is in words and figures as follows:

2 In the District Court of the United States for the Western Division of the Western Judicial District of the State of Missouri.

No. —.

WALTER A. EASTES, Complainant,

vs.

GEORGE F. CRUTCHLEY, Collector of the Internal Revenue of the United States for the Sixth District of Missouri; Shrader P. Howell, Federal Prohibition Director for the State of Missouri, Defendants.

Bill in Equity.

To the Honorable A. S. Van Valkenburgh, judge of the United States District Court:

Walter A. Eastes, a citizen and resident of Kansas City, Missouri, brings this bill of complaint against George F. Crutchley, a citizen and resident of said city and state, who is the duly appointed, qualified and acting Collector of Internal Revenue of the United States for the Sixth Internal Revenue District of the State of Missouri, and Shrader P. Howell, a citizen and resident of Jackson County, in the State of Missouri, who is the duly appointed, qualified and acting Federal Prohibition Director of the State of Missouri, and the agent of William M. Williams, Commissioner of Internal Revenue for the United States, and respectfully shows unto this Honorable Court as follows:

That the defendant Crutchley, as such collector of the revenue, is charged by law with the duty of collecting and receiving taxes due the United States on distilled spirits in Government Bonded warehouses in said District, and upon the payment of the taxes due on said spirits by the owners thereof, to issue internal revenue stamps showing the payment of the taxes due the United States on
3 said spirits, and, upon permits duly issued by the defendant, Howell, to release said spirits to the owners thereof; that the Government Bonded warehouses in said District, and the distilled spirits on deposits therein, and keys to said warehouses, and the right of ingress and egress from and to the same are now in the custody and control of said defendant Crutchley; that under the Act of the Congress of the United States of October 28th, 1919, entitled the "National Prohibition Act", the defendant Howell is charged with the duty of issuing permits for the delivery, transportation and possession of distilled spirits to persons authorized by said Act to accept delivery of, transport and possess said spirits and, upon the issuance of said permits by said defendant, Howell to the owners of spirits on deposit in said Government Bonded warehouses, and presentation of the same to defendant Crutchley, on the payment to the United States of

the taxes due thereon, it is the duty of said Crutchley to release said spirits and deliver the same to said permit-ee;

That complainant is the owner of one barrel of distilled spirits hereinafter described, and became the owner thereof, and has owned the same ever since the month of August 1917; that said spirits are now on deposit in Government General Bonded Warehouse No. 2 of the United States, located at Wyandotte and Broadway Streets on Fourth Street in Kansas City, Missouri, and in the Sixth United States Internal Revenue District of said State; that said spirits are contained in a wooden barrel numbered 24221, containing approximately forty (40) taxable gallons, produced by the Blue Valley Distilling Company at Distillery No. 6, situated in Jackson County, in the State of Missouri, in the Sixth United States Internal Revenue District of said State; that there is now due the United States as taxes on the aforesaid spirits of complainant the sum of Two Hundred and Fifty-six Dollars ($256.00):

4 That the complainant has heretofore on the 4th day of May, 1921, presented to the defendant, Howell, a verified, written application setting forth the qualification of the applicant, and that he desires to obtain delivery, and possession of his said private property and to transport said spirits to his private dwelling in the City of Kansas City, which is occupied and used by him as his dwelling only, and to keep and use the same for lawful purposes therein; All of which will appear by an examination of the said verified written application herewith filed and marked, "Complainant's Exhibit No. 1"; that said defendant, Howell, wrongfully and without authority of law, refused to grant complainant the permit applied for, as aforesaid:

That the complainant has tendered to defendant Crutchley the full amount of the tax due the United States on said spirits, as aforesaid, and has demanded of the said defendant that he issue complainant United States Internal Revenue Stamps showing the payment of the aforesaid tax on said spirits, and that he release the said spirits, all of which will more fully appear by an examination of the written tender of the said tax and demand made upon the said Crutchley filed herewith and marked "Complainant's Exhibit No. 2"; that the defendant Crutchley, refused and still refuses to accept said tender or to release said spirits:

That the complainant desires to obtain the possession of said spirits as his private property, and to transport the same to his private dwelling, number 6007 Brookside in Kansas City, Missouri, which is occupied and used by complainant as his dwelling only, and to keep the same in said dwelling and use the same therein for lawful purposes only; that he does not desire the possession of said spirits for the purpose of barter or sale, or of disposing of the same or using same in violation of any law of the United States and he will not do so.

5 That in refusing to grant the permit for the delivery of said spirits and to accept the tender of taxes thereon and to issue Internal Revenue Stamps therefor as aforesaid, the defendants have claimed to act under the terms and authority of an Act of Congress

passed on or about October 28, 1919, commonly known as the Volstead Act. But your complainant is advised and accordingly avers that the said Volstead Act contains no provision which requires or authorizes the defendants to refuse said permit or to decline to receive payment of said taxes, as aforesaid, for the reason, among others, that said spirits were purchased by the complainant, as aforesaid, prior to the effective date of the said Volstead Act, and that he purchased said spirits, as aforesaid, solely for delivery to his said private dwelling and to be kept and used therein for lawful purposes only and as hereinbefore stated. And this complainant further avers that the removal of the said distilled spirits from the said U. S. Bonded Warehouse to his private dwelling for the purposes above specified, on the payment of the tax thereon, is not forbidden by the Eighteenth Amendment to the Constitution of the United States or the said Volstead Act. And this complainant is further advised and therefore alleges that if said Volstead Act is susceptible of a construction authorizing or justifying the action of the defendants in refusing to permit the removal of said spirits to his private dwelling for the purposes above specified on payment of the tax thereon, so much of said statute is unconstitutional, void and of no effect, for the reason that it transcends the power of Congress under the Eighteenth Amendment to the Constitution of the United States, deprives the plaintiff of his property without due process of law and without just compensation, and denies him the equal protection of the law, contrary to the Fifth Amendment to the Constitution of the United States.

6 Wherefore the complainant prays this Honorable Court

(1) For a decree ordering and directing the defendant, Shrader P. Howell, Federal Prohibition Director for the State of Missouri, to grant the permit applied for by the complainant as aforesaid;

(2) For a decree ordering and directing the said defendant, George F. Crutchley, Collector of Internal Revenue for the Sixth District of Missouri, to receive the aforesaid tender and to issue to the complainant Internal Revenue Stamps showing the payment of the said tax and to release and deliver the said distilled spirits to the complainant;

(3) That the complainant may have such other and further relief and such other and further orders and decrees as his case may require and as to the Court shall seem just and equitable.

May it please your Honor to grant unto this complainant a Writ of Subpœna directed to the defendant, George F. Crutchley, Collector of Internal Revenue for the Sixth District of Missouri, and the defendant, Shrader P. Howell, Federal Prohibition Director for the State of Missouri, commanding them and each of them to be and appear, either in person or by Solicitor, in this Honorable Court on or before a certain day therein to be named, and to answer this Bill of

Complaint and to show cause, if any they have, why a decree ought not to be passed as prayed.

And as in duty bound, etc.

(Signed) JOHN T. BARKER,
ELLIOTT W. MAJOR,
Attorneys for Complainant.

(Signed) WALTER A. EASTES,
Complainant.

7 (COMPLAINANT'S EXHIBIT No. 1.)

Application for Permit to Remove and Transport Distilled Spirits.

Kansas City, Missouri, May 3rd, 1921.

To Shrader P. Howell,
Federal Prohibition Director for the State of Missouri,
Kansas City, Missouri.

DEAR SIR:

I, the undersigned, Walter A. Eastes, hereby make application for a permit to remove the distilled spirits described below and now stored in the premises known as the Adams Transfer & Storage Company, general bonded warehouse No. 2, between Wyandotte and Broadway Streets on Fourth Street in Kansas City, Missouri, the said premises being used as a United States bonded warehouse for the purpose of receiving and storing distilled spirits, and now being in the custody and control of George F. Crutchley, Collector of Internal Revenue of the United States for the Sixth District of Missouri; and I further make application for a permit to transport from the said general bonded warehouse No. 2 the said distilled spirits described below to my private residence, same being known as 6007 Brookside Blvd., Kansas City, Missouri, and which said number is my private dwelling and is now used and occupied by me as a private dwelling only, such transportation to be completed on or before the 20th day of May, 1921. Said distilled spirits are described as follows:

Description of Distilled Spirits.

Kind of liquor.	No. and kind of packages.	Serial No. of packages, if any.	Quantity in wine gals.	Date when, how, and from whom procured.
(1)	(2)	(3)	(4)	(5)
Distilled Spirits, commercially known as "Blue Springs Sour Mash Whiskey."	Contained in wooden barrel.	24221.	Approx. 40.	Purchased by the undersigned, Walter A. Eastes, on Aug. 24, 1917, from S. Hirsch Dist. Co. Warehouse, Certificate No. B 405, representing and transferring the title to and ownership of the said distilled spirits.

8 I further state and swear that the above statements are true and further that I purchased the said warehouse certificate on the 24th day of August, 1917, and that I have been ever since that date and am now the sole and legal owner of said certificate and said distilled spirits above described and that the same were legally acquired by me and will be legally kept and used by me in my said private dwelling only. I further state that I desire said permit for the sole purpose of removing and transporting said distilled spirits from said Government Bonded Warehouse to my said private dwelling, No. 6007 Brookside in the City of Kansas City, State of Missouri and which is now occupied and used by me as my private dwelling only and in which said private dwelling I desire to keep and will keep the said distilled spirits and use the same therein for lawful purposes only. I further state that I do not desire the possession of said distilled spirits for the purpose of barter and sale or disposing of same or using the same in violation of any law of the United States and I will not so do. I further state and swear that before removing and transporting the said distilled spirits I intend to and will fully comply with all the laws of the United States and pay and tender to the Collector of Internal Revenue of the United States for this District the full and proper tax thereon.

(Signed) WALTER A. EASTES.

STATE OF MISSOURI,
County of Jackson, ss:

Walter A. Estes, being first duly sworn upon his oath, says that the above matters and facts stated in this verified written application for a permit to remove and transport distilled spirits are true and correct. This 3rd day of May, 1921.

(Signed) WALTER A. ESTES.

Subscribed and sworn to before me a Notary Public within and for the City of Kansas City, County of Jackson, State of Missouri, this 3rd day of May 1921.

My commission as Notary Public expires on the 11th day of Dec. 1924.

[SEAL.] (Signed) A. VYOLA FITZGERALD,
Notary Public.

9 I hereby refuse to issue the permit to transport distilled spirits applied for in the above written verified application and refuse to comply with the requests therein made. This 4th day of May 1921.

(Signed) SHRADER P. HOWELL,
Federal Prohibition Director for the State of Missouri,
By JOE W. McQUEEN,
Chief Clerk & Inspector.

10 (COMPLAINANT'S EXHIBIT NO. 2.)

Tender of Tax.

Kansas City, Missouri, May 3rd, 1921.

To George F. Crutchley,
Collector of Internal Revenue for the Sixth District of Missouri,
Kansas City, Missouri.

DEAR SIR:

I, Walter A. Eastes, the undersigned, hereby tender to you the sum of Two Hundred Fifty-Six ($256.00) Dollars for the purpose of paying the United States tax on one barrel of distilled spirits, the said barrel containing approximately forty proof gallons, commercially known as "Blue Springs Sour Mash Whiskey", being Serial No. 24221 and stored in the Adams Transfer & Storage Company General Bonded Warehouse No. 2 between Wyandotte and Broadway Streets on Fourth Street in Kansas City, Missouri, the said premises being used as a United States Bonded Warehouse for the purpose of storing distilled spirits and now being in your custody and control as the Collector of Internal Revenue of the United States for the Sixth District of Missouri. The said distilled spirits were purchased by me on August 24th 1917, from S. Hirsch Distilling Company, for the purpose of being transported from said Government Bonded Warehouse to my private dwelling, No. 6007 Brookside in the City of Kansas City, State of Missouri, and which is now occupied and used by me as my private dwelling only and in which said private dwelling I desire to keep the said distilled spirits and use the same therein for lawful purposes only. That I do not desire the possession of said distilled spirits for the purpose of barter or sale or of disposing of same or using the same in violation of any law of the United States and I will not so do; and I further state I am the sole owner of the said distilled spirits above described and the same were legally acquired by me and will be legally kept and used by me in my said private dwelling only.

11 I now desire to pay the tax on the said distilled spirits and hereby and herewith hand and tender to you $256.00, being the approximate tax at the rate of $6.40 per gallon, and I hereby request you to issue to me United States Revenue Stamps showing the payment of the aforesaid tax on said distilled spirits and desire to have you order the said spirits to be gauged and released from the said Adams Transfer & Storage Company General Bonded Warehouse No. 2 between Wyandotte and Broadway Streets on Fourth Street in aKnsas City, Missouri, and upon the release of the same, I intend to transport the said distilled spirits to my said private dwelling, situated as above stated and described and to be kept and used in my said private dwelling for the purposes only hereinabove stated, and I hereby exhibit to you the original certifi-

cate of the S. Hirsch Distilling Company, showing the Serial Number of the said barrel of distilled spirits to be 24221.

Respectfully yours,
(Signed) WALTER A. EASTES.

STATE OF MISSOURI,
County of Jackson, ss:

Walter A. Eastes being first sworn upon his oath says that the matters and facts stated in the above tender of Tax and in the above application are true and correct according to his best knowledge and belief.

(Signed) WALTER A. EASTES.

Subscribed and sworn to before me a Notary Public within and for the County of Jackson this 3rd day of May 1921.
My commission expires on the 11th day of Dec. 1924.
[SEAL.] (Signed) A. VYOLA FITZGERALD,
Notary Public.

12 I refuse to accept the tender of tax made on distilled spirits as above set out and I refuse to issue the United States Revenue Stamps in payment of the said tax on said distilled spirits and I refuse to order the said distilled spirits gauged and I refuse to release said distilled spirits from the Government Bonded Warehouse or to comply in any manner with the requests contained in the above tender and application, because Prohibition Director refused to issue permit May 4, 1921.

(Signed) GEORGE F. CRUTCHLEY,
Collector of Internal Revenue of the United States for the Sixth District of Missouri.

13 And afterwards, to-wit, on the 7th day of July, 1921, a Motion to dismiss was filed.
Said Motion to Dismiss is in words and figures as follows.

14 In the District Court of the United States for the Western Division of the Western Judicial District of the State of Missouri.

WALTER A. EASTES, Complainant,

vs.

GEORGE F. CRUTCHLEY, Collector of Internal Revenue for the Sixth District of Missouri, and Shrader P. Howell, Federal Prohibition Director for the State of Missouri.

Motion to Dismiss Bill.

Now come the defendants herein, and move to dismiss the bill of complaint herein for the reason that said bill fails to allege any mat-

ter of equity entitling the complainant to the relief prayed for therein, or to any relief.

GEORGE F. CRUTCHLEY,
SHRADER P. HOWELL,
Defendants.

(Signed) By CHAS. C. MADISON,
United States Attorney.

15 And afterwards, to-wit, on the 7th day of July, 1921, an Order sustaining the Motion to Dismiss was filed and entered of record.

Said Order is in words and figures as follows:

16 In the District Court of the United States for the Western Division of the Western Judicial District of the State of Missouri.

WALTER A. EASTES, Complainant,

vs.

GEORGE F. CRUTCHLEY, Collector of Internal Revenue for the Sixth District of Missouri, and Shrader P. Howell, Federal Prohibition Director for the State of Missouri, Defendants.

Order Sustaining Motion to Dismiss and Granting Appeal.

Now on this 7th day of July, 1921, comes the plaintiff in person and by his attorney, John T. Barker, and the defendants, represented by their attorneys Hon. C. C. Madison, District Attorney, and Hon. W. H. Hallett, Assistant District Attorney, and it appearing to the court after listening to arguments by both sides that the motion to dismiss plaintiff's bill should be sustained; it is hereby ordered adjudged and decreed that the defendants' motion to dismiss plaintiff's bill for lack of equity be sustained and that judgment be entered for the defendants and that plaintiff be allowed an exception and be granted an appeal to the Supreme Court of the United States, which appeal is asked for in open court upon the filing of a bond in the sum of Two Hundred and Fifty Dollars ($250.00), which is herewith filed and approved by the court.

(Signed) ARBAS S. VAN VALKENBURGH,
Judge.

17 And afterwards, to-wit, on the 7th day of July, 1921, Petition for Appeal, together with the allowance thereof, Assignment of Errors, Bond on Appeal and Præcipe for Transcript were filed.

Said Petition for Appeal, together with the allowance thereof, Assignment of Errors, Bond on Appeal and Præcipe for Transcript are in words and figures as follows:

18 In the District Court of the United States for the Western Division of the Western Judicial District of the State of Missouri.

No. —.

WALTER A. EASTES, Complainant,

vs.

GEORGE F. CRUTCHLEY, Collector of the Internal Revenue of the United States for the Sixth District of Missouri; Shrader P. Howell, Federal Prohibition Director for the State of Missouri, Defendants.

Petition for Appeal.

To the Honorable A. S. Van Valkenburgh, judge of the United States District Court:

The above named plaintiff, Walter A. Eastes, believing himself aggrieved by the decree made and entered in this cause on the 7th day of July 1921, dismissing plaintiff's bill of complaint, does hereby appeal from said decree to the Supreme Court of the United States for the reasons set forth in the assignment of errors which is filed herewith, and plaintiff prays that his appeal may be allowed, and that citation issue as provided by law, and that a transcript of the record, upon which said decree was based, duly authenticated, may be sent to the United States Supreme Court.

(Signed) JOHN T. BARKER AND
ELLIOTT W. MAJOR,
Solicitors for Plaintiff.

Kansas City, Mo., July —, 1921.

Notice of appeal received.
Issuance of citation waived.
(Signed) CHAS. C. MADISON,
Solicitor for Defts.

Allowed July 7, 1921.
(Signed) ARBA S. VAN VALKENBURGH,
Judge.

19 In the District Court of the United States for the Western Division of the Western Judicial District of the State of Missouri.

No. —.

WALTER A. EASTES, Complainant,

vs.

GEORGE F. CRUTCHLEY, Collector of the Internal Revenue of the United States for the Sixth District of Missouri: Shrader P. Howell, Federal Prohibition Director for the State of Missouri, Defendants.

Assignment of Errors.

Now comes the plaintiff in the above entitled cause and respectfully complains that the decree entered in said cause on the 7 day of July 1921, is erroneous and prejudicial to plaintiff in the following particulars:

I.

The court erred in sustaining the defendant's motion to dismiss said bill and in entering a decree in dismissing said bill.

II.

Said decree deprives the plaintiff of the protection of the Fifth Amendment to the Constitution of the United States, in that it sanctions the taking of plaintiff's private property without due process of law, and the taking of plaintiff's private property for a public use without any compensation.

III.

Said decree is neither supported nor sustained by the Eighteenth Amendment to the Constitution of the United States.

20 IV.

In rendering said decree, the Court erroneously held the Fifth and the Eighteenth Amendments to be in conflict.

V.

Under the allegations of plaintiff's bill he is entitled to a decree against the defendant Howell compelling and directing said defendant to grant the permit applied for in said complaint and to compel defendant Crutchley to receive the tender of tax offered him and to release to plaintiff the spirits described in said bill.

VI.

The court erred in dismissing the bill for want of equity.

Wherefore, plaintiff prays that said decree be reversed; that the Supreme Court cause the proper decree to be entered directing the defendant Howell to grant the permit applied for and directing defendant Crutchley to release to the plaintiff the spirits described in plaintiff's bill, and for such other and further relief as the plaintiff may be entitled to receive.

(Signed) JOHN T. BARKER,
ELLIOTT W. MAJOR,
Solicitors for Plaintiff.

21 In the District Court of the United States for the Western Division of the Western Judicial District of the State of Missouri.

No. —.

WALTER A. EASTES, Complainant,

vs.

GEORGE F. CRUTCHLEY, Collector of the Internal Revenue of the United States for the Sixth District of Missouri; Shrader P. Howell, Federal Prohibition Director for the State of Missouri, Defendants.

Bond on Appeal.

Know all men by these presents: That we, Walter A. Eastes as principal, and John T. Barker as sure*ties* acknowledge ourselves to be jointly indebted to the United States, appellee in the above cause in the sum of $250.00 *dollars* conditioned that, whereas, on the 7 day of July, A. D. 1921, in the District Court of the United States for the Western Division of the Western District of Missouri in a suit pending in that Court, wherein Walter A. Eastes was plaintiff and George F. Crutchley, Collector of the Internal Revenue of the United States for the Sixth District of Missouri, and Shrader P. Howell, Federal Prohibition Director for the State of Missouri, were defendants, numbered on the docket as —, a decree was rendered against the said Walter A. Eastes and the said Walter A. Eastes having obtained an appeal to the Supreme Court of the United States and filed a copy thereof in the office of the clerk of the court to reverse the said decree.

Now, if the said Walter A. Eastes shall prosecute his appeal to effect and answer all costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

(Signed) WALTER A. EASTES,
Principal.
JOHN T. BARKER,
Surities.

Approved July 7, 1921.
(Signed) ARBA S. VAN VALKENBURGH,
Judge of the District Court for the Western District of Missouri.

22 In the District Court of the United States for the Western Division of the Western Judicial District of the State of Missouri.

No. —.

WALTER A. EASTES, Complainant,

vs.

GEORGE F. CRUTCHLEY, Collector of the Internal Revenue of the United States for the Sixth District of Missouri; Shrader P. Howell, Federal Prohibition Director for the State of Missouri, Defendants.

Præcipe for Transcript.

To the clerk:

You will please prepare and duly authenticate a typewritten transcript of the record in the above entitled cause for an appeal to the Supreme Court of the United States, excluding the formal and immaterial parts of the pleadings, documents and other papers, in accordance with Equity Rule 76, to-wit:

First. The Bill of complaint and the order filing same.

Second. Motion of defendant to dismiss and entry showing the filing of the same.

Third. Record showing submission of motion to dismiss for the decision of the Court.

Fourth. Final Decree.

Fifth. Petition for allowance of appeal.

Sixth. Assignment of errors.

Seventh. Order allowing appeal.

Eighth. Citation issued on the appeal showing acknowledgement of service thereon.

Ninth. Copy of Appeal Bond.

Tenth. This præcipe.

(Signed) JOHN T. PARKER,
ELLIOTT W. MAJOR,
Solicitors for Plaintiff.

23 UNITED STATES OF AMERICA, *sct:*

I, Edwin R. Durham, Clerk of the District Court of the United States for the Western Division of the Western District of Missouri, do hereby certify that the foregoing is a full, true and complete transcript of the record, assignment of errors, and all proceedings in the case wherein Walter A. Eastes is complainant and George F. Crutchley, Collector of Internal Revenue of the United States for the Sixth District of Missouri, and Shrader P. Howell, Federal Prohibition Director for the State of Missouri, are defendants, as fully as the same appears on file and of record in my office.

I further certify that the original citation is prefixed hereto and returned herewith.

Witness my hand as Clerk and the seal of said Court. Done at office in Kansas City, Missouri, this 21st day of July, A. D. 1921.

[Seal of the United States District Court of Missouri, Western Division, Western District.]

EDWIN R. DURHAM,
Clerk U. S. District Court.

Endorsed on cover: File No. 28,503. W. Missouri D. C. U. S. Term No. 548. Walter A. Eastes, appellant, vs. George F. Crutchley, collector of internal revenue for the Sixth district of Missouri, et al. Filed September 23d, 1924. File No. 28,503.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1921.

No. 174.

CHARLES CORNELI, *Appellant*,

v.

GEORGE H. MOORE, COLLECTOR OF INTERNAL REVENUE FOR THE FIRST DISTRICT OF MISSOURI, *Respondent*.

No. 175.

GEORGE J. GHIO, *Appellant*,

v.

GEORGE H. MOORE, COLLECTOR OF INTERNAL REVENUE FOR THE FIRST DISTRICT OF MISSOURI, *Respondent*.

No. 428.

WILLIAM H. BRYAN, *Appellant*,

v.

JOSHUA W. MILES, COLLECTOR OF INTERNAL REVENUE FOR THE DISTRICT OF MARYLAND, AND RICHARD S. DODSON, FEDERAL PROHIBITION DIRECTOR FOR THE DISTRICT OF MARYLAND, *Respondents*.

BRIEF AMICUS CURIAE.

IN SUPPORT OF MOTIONS TO DISMISS THE BILLS OF COMPLAINT.

Agreeable to the permission of the Court this brief is filed as *Amicus Curiae* in the hope that some of the authorities and reasons given may prove helpful in determining the proper construction to be placed upon The National Prohibition Act.

STATEMENT.

This brief is submitted to sustain the following proposition of law which is believed to be determinative of the case:

There is no authority in the National Prohibition Act for a person to withdraw liquor from a Government bonded warehouse and transport it to his private residence for his personal use since the enactment of the National Prohibition Act. If this contention is correct it makes no difference whether he owned the warehouse receipt before the law went into effect or bought it afterwards. The provisions of the National Prohibition Act relating to this case are as follows:

> Section 3. No person shall on or after the date when the eighteenth amendment to the Constitution of the United States goes into effect, manufacture, sell, barter, transport, import, export, deliver, furnish or possess any intoxicating liquor except as authorized in this Act, and all the provisions of this Act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented. Liquor for non-beverage purposes and wine for sacramental purposes may be manufactured, purchased, sold, bartered, transported, imported, exported, delivered, furnished and possessed, but only as herein provided, and the commissioner may, upon application, issue permits therefor: *Provided,* That nothing in this Act shall prohibit the purchase and sale of warehouse receipts covering distilled spirits on deposit in Government bonded warehouses, and no special tax liability shall attach to the business of purchasing and selling such warehouse receipts.
>
> Section 33. After February 1, 1920, the possession of liquors by any person not legally permitted

under this title to possess liquor shall be *prima facie* evidence that such liquor is kept for the purpose of being sold, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this title. Every person legally permitted under this title to have liquor shall report to the commissioner within ten days after the date when the eighteenth amendment of the Constitution of the United States goes into effect, the kind and amount of intoxicating liquors in his possession. But it shall not be unlawful to possess liquors in one's private dwelling while the same is occupied and used by him as his dwelling only and such liquor need not be reported. * * *

Section 37. Nothing herein shall prevent the storage in United States bonded warehouses of all liquor manufactured prior to the taking effect of this Act, or prevent the transportation of such liquor to such warehouses or to any wholesale druggist for sale to such druggist for purposes not prohibited when the tax is paid, and permits may be issued therefor.

ALL POSSESSION OF LIQUOR UNLAWFUL EXCEPT AS AUTHORIZED IN THE NATIONAL PROHIBITION ACT.

It is clear from the above sections of the statute that no one is permitted to transport or possess intoxicating liquor except as authorized in the National Prohibition Act. Section 33 provides that every person legally permitted to have liquor shall report to the commissioner within ten days after the date when the eighteenth amendment to the Constitution goes into effect. There is nothing in the bill of complaint to show that the complainant, Corneli, reported such liquor to the commissioner or complied with any of the provisions of this section, even if he was entitled to have the liquor

kept in the bonded warehouse for his personal use until it was transported to his residence.

Section 37 fixes the status of liquor manufactured prior to prohibition and stored in the Government bonded warehouses. The permissible use of such liquor is provided for. Liquors in the bonded warehouse may be transported to such warehouse or to any wholesale druggist for sale to such druggist for purposes not prohibited when the tax is paid. No provision is made in this section for withdrawing liquor from a Government bonded warehouse and transporting it to a private residence for beverage purposes.

The purpose of the National Prohibition Act is clear in that it prohibits the manufacture, sale, transportation, importation, exportation, delivery, furnishing or possession of any intoxicating liquor except as authorized in the Act. There is not one provision in the National Prohibition Act which authorizes the withdrawal of liquor from a Government bonded warehouse to be transported to a private residence for beverage purposes. If that had been permitted, every person in the United States who wanted liquor for beverage purposes would at once have made arrangements with some distiller or owner of a warehouse receipt to transfer title to this liquor before the law went into effect, and the 40,000,000 gallons in the bonded warehouses which was supposed to be used for non-beverage purposes would have been consumed or disposed of for purposes prohibited by the Act.

When National prohibition went into effect the policy the Government adopted was to prohibit the beverage traffic and the possession of intoxicating liquor for beverage purposes with one exception. Congress pro-

vided that liquor purchased and possessed by the owner for his own use in his own private residence and for bona fide guests should not be prohibited. This manifest purpose in the law is clearly inconsistent with the idea that all of the liquor on hand in the Government warehouses could be transferred to individuals for beverage purposes and transported at any time thereafter. Such a construction is not only inconsistent with the plain wording of the law but would manifestly make it difficult if not impossible for the officers to enforce the Prohibition Act with such an exception in it.

IN ALL OF THE PROHIBITION LAWS OF THE STATES WHICH PROHIBIT THE MANUFACTURE, SALE, TRANSPORTATION, ETC., OF INTOXICATING LIQUOR EXCEPT AS AUTHORIZED BY THE LAW, THOSE WHO CLAIM THE RIGHT TO MAKE OR POSSESS SUCH LIQUOR MUST SET FORTH THE PROVISIONS IN THE LAW WHICH AUTHORIZED THEM TO HAVE CONTROL OF THE LIQUOR. THIS IS THE FORM OF THE PROHIBITION IN SECTION 3 OF THE NATIONAL PROHIBITION ACT. These laws do not confine the prohibition to beverage liquor traffic, but prohibits intoxicating liquors for all purposes except as authorized in the Act. Those who desire to make, sell, transport or possess liquor under a general prohibition of such Acts must do so under some specific exception named in the law. In the recent case of Crane v. Campbell, 245 U. S., 304, the Supreme Court sustained the decision of the state court which held:

> "The only means provided by the Act for procuring intoxicating liquors in the prohibition dis-

> trict for any purpose relates to wine to be used for sacramental purposes and pure alcohol to be used for scientific or mechanical purposes, or for compounding or preparing medicines, so that the possession of whiskey, or of any intoxicating liquor, other than wine and pure alcohol for the uses above mentioned is prohibited."

Section 15 of the state law provides:

> "It shall be unlawful for any person to import, ship, sell, transport, deliver, receive or have in his possession any intoxicating liquors except as in this Act provided."

The full text of the statute of Idaho setting forth the exceptions will be found in the decision of the State Supreme Court *ex parte* Crane, 151 Pac. Rep., 1006.

That this is the rule adopted in the construction of prohibitory laws is well established. The Superior Court of Utah in construing an act of the legislature of that state (Laws 1917, C 2) State v. Certain Intoxicating Liquors, 172 P. 1050, prohibiting all sale, manufacture, use and possession of intoxicating liquor except as authorized, in answer to the contention that the statute did not prohibit the possession of liquor acquired prior to the date upon which the act became effective and intended for the personal use of the owner said:

> "(1) No exceptions being made in the act other than the foregoing, we think it is made clear by the sections quoted that it was the legislative intent to not only forbid the possession but to abolish property rights in alcoholic liquors within the confines of the state after August 1, 1917, *aside from the exceptions expressly provided for in the Act*, no matter when or how acquired, for what use intended, or in what place kept or possessed. * * *

> "The tendency of the more recent legislation of the several states with respect to alcoholic liquors is directly against the consumption. It is in the consumption always that the evil lies. A reading of the Utah statute convinces that primarily it was the purpose and intent of the Legislature to prevent the use of liquors within the confines of the state as a beverage, whether in private or moderation. The act itself provides that it shall be deemed an exercise of the police powers for the protection of society, and that all of its provisions shall be liberally construed for the attainment of that purpose. The law in itself does not distinguish as to persons, time, place or purpose for which liquors may be held or possessed except as in the act expressly mentioned and reserved. Officers and the courts are made chargeable with its observance and enforcement. Upon these its efficacy depends." (Italics ours)

The Supreme Court of the State of Washington in State v. Giaudrone, 186 P. 870, construing the prohibition laws of that state held:

> "Laws 1917 p. 60, §17h, prohibits entirely the use of intoxicating liquors as a beverage, or the possession thereof for *any purpose except those specified*, and prohibits the possession of liquor obtained prior to its passage, notwithstanding section 23 and other sections relating to the giving of liquor to guests in private dwellings, etc." (Italics ours.)

The Supreme Court of Nebraska in the case of Fitch v. State, 167 N. W., at pp. 418 and 419 said in construing the prohibition laws of that state, Chap. 187 of Laws of 1917:

> "But there is no provision anywhere in the act authorizing the sale of whiskey to any person under any condition, or authorizing its possession by any person *except only as it is permitted to be kept in a private dwelling house.*" (Italics ours.)

These cases all hold that where there is a general prohibition in a statute with certain named exceptions that the burden is upon him who seeks exemption from the operation of the law to clearly show the act to be within the terms of such exceptions.

THE GENERAL RULE OF STATUTORY CONSTRUCTION IS THAT A PROVISO CARVES SPECIAL EXCEPTIONS ONLY OUT OF A GENERAL ENACTING CLAUSE; AND THAT THOSE WHO SET UP ANY SUCH EXCEPTION MUST ESTABLISH IT AS BEING WITHIN THE WORDS AS WELL AS THE REASON THEREOF.

United States v. Dickson, 15 Pet. 141, 165, 10 L. Ed., 689,
Ryan v. Carter, 93 U. S., 78, 83, 23 L. Ed., 807,
Schlemmer v. Buffalo Railway, 205 U. S., 1, 10, 27 Su. Ct., 407, 51 L. Ed., 681,
United States v. Trinity Railway (5th Circ.), 211 Fed., 448, 453, 128 C. C. A., 120.

Section 3 of the National Prohibition Act provides as follows:

> "Sec. 3. No person shall on or after the date when the eighteenth amendment to the Constitution of the United States goes into effect, manufacture, sell, barter, transport, import, export, deliver, furnish or possess any intoxicating liquor except as authorized in this Act, and all the provisions of this Act shall be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented.

"Liquor for non-beverage purposes and wine for sacramental purposes may be manufacteured, purchased, sold, bartered, transported, imported, exported, delivered, furnished and possessed, but only as herein provided, and the commissioner may, upon application, issue permits therefor; *Provided*, that nothing in this Act shall prohibit the purchase and sale of warehouse receipts covering distilled spirits on deposit in Government bonded warehouses, and no special tax liability shall attach to the business of purchasing and selling such warehouse receipts."

There is no provision in the National Prohibition Act which authorizes the withdrawal of intoxicating liquor for beverage purposes from the bonded warehouse. Congress recognized and provided in express terms for the disposition of liquors manufactured prior to the date upon which the Act became effective, stored in bonded warehouses. This provision is made in Section 37 quoted above. Because of the practice which had grown up in the liquor trade of transferring title to liquors stored in Government bonded warehouses by means of warehouse receipts, and in order to facilitate the transfer of such liquors to the permitted non-beverage uses, the proviso was inserted in Section 3 relative to warehouse receipts. Coming as it does right after the exception made as to non-beverage liquors along with its provision stating that no tax liability shall attach to the business of purchasing and selling such warehouse receipts, this intent upon the part of Congress is clearly manifest. The transportation and possession for non-beverage and sacramental use is provided for in Section 3 of Title II as follows:

> "Liquor for non-beverage purposes and wine for sacramental purposes may be manufactured, purchased, sold, bartered, transported, imported, exported, delivered, furnished and possessed, but only as herein provided, and the commissioner may, upon application, issue permits therefor."

Other exceptions are contained in Sections 4, 6 and 33 of Title II and Title III.

Congress having made provision for the permitted uses of liquor and having in express terms in the language of Section 37 provided for the disposition of liquors in bonded warehouses by all principles of statutory construction no exception should be implied. If the statute had been silent upon the question of the disposition of liquor in bonded warehouses the case of the complainants would be stronger and the court might infer an intention that their transportation from the bonded warehouses to the private dwelling of the owner for personal use was not prohibited. But in the face of the positive provision of the Act no such exception can be implied.

One of the principle problems which confronted Congress in making effective the prohibition of the eighteenth amendment was the necessity for insuring that the enormous stocks of liquors stored in Government bonded warehouses should be distributed and used for strictly non-beverage purposes. That was carefully safeguarded and it was provided that it should be transported only to wholesale druggists for sale to such druggists for purposes not prohibited when the tax was paid, or that it might be transported to such Government bonded warehouses, is clearly indicative of an intent to prevent its withdrawal from bond for beverage purposes. A complete system of control over the trans-

portation of liquors by the means of permits is provided in the various sections of the Act (Sections 6, 7, 10, 11 and 37). All transportation must be upon a permit issued by the commissioner or his agent except in the case of liquor prescribed by a physician. In Section 37 which treats of the transportation from bonded warehouses it is provided that permits may issue for the purposes authorized in the section. There is no provision for the issuance of a permit to transport from a Government bonded warehouse to a private dwelling for personal use.

Congress having expressly named the places to which liquors stored in bonded warehouses could be transported under the principle of *expressio unius exclusio alterius* no exception should be implied.

THE PURPOSE OF THE NATIONAL PROHIBITION ACT.

The purpose of the National Prohibition Act is clearly set forth in the provision which says:

> "All the provisions of this Act shall be liberally construed to the end that the use of intoxicating liquors as a beverage may be prevented."

It is true that an exception was inserted in the Act to the effect that intoxicating liquor purchased and possessed before the law went into effect might be kept in the private dwelling as defined in the Act and such liquor need not be reported as required for all other liquors legally possessed. See Section 33. The chief reason why this provision was inserted in the bill was because this Court had left some doubt as to the power of Congress to prohibit possession of liquor which had

been legally purchased before the law went into operation. See Barbour v. Georgia, 249 U. S., 454, 63 L. Ed., 705, decided April 14, 1919, before this law was enacted. In that case this Court said:

> "The defendant raised, in his amended motion for a new trial, the further objection that the law was unconstitutional as applied to him, because the liquor had been acquired before the statute was enacted; but the trial judge denied the motion and declined to approve any of the grounds on which it was based. In accordance with the state practice its Supreme Court therefore refused to consider the point. Dickens v. State, 137 Ga., 523; Harris v. State, 120 Ga., 196, 197. Consequently the question is not before us, Louisville & Nashville Railroad Company v. Woodford, 234 U. S., 46, 51; and on it we express no opinion."

The later case of Rhode Island v. Palmer, 253 U. S. 387, 64 L. Ed., 946, construing the National Prohibition Act settled this question so there can be no doubt about the authority of Congress to prohibit entirely the possession of liquor for beverage purposes either within or without a private dwelling regardless of whether it was purchased before or after the law went into effect. This Court said:

> "The power of Congress to enforce the Prohibition Amendment to the Federal Constitution may be exerted against the disposal for beverage purposes of liquors manufactured before the Amendment became effective, just as it may be against subsequent manufacture for those purposes."

The Congress, however, did clearly intend to prohibit persons from securing or possessing liquor for

beverage purposes except that which was actually in their possession before the law went into effect, and the liquors legally possessed must be reported as required by Section 33, except those that were actually in the private dwelling. This purpose is in direct harmony with the purpose of prohibition laws generally.

The Supreme Court of Alabama in the case of Southern Express Company v. Whittle, 194 Ala., 406, said:

> "THE OBJECT AND PURPOSE OF ALL LAWS GOVERNING THE SUBJECT OF INTOXICATING LIQUORS IS 'TO PROMOTE TEMPERANCE.' THE EVIL TO BE REMEDIED IS THE USE OF INTOXICATING LIQUORS AS A BEVERAGE."

Expressions of this kind might be multiplied showing that the courts in construing the purpose of prohibition statutes recognize that their purpose is to prevent the consumption of liquor as a beverage.

Ex parte Crane, 151 P. 1006,
Lincoln v. State, 27 Vt., 320 at 337,
State v. J. P. Bass Publishing Co., 104 Me. 288, 71 A. 894,
Marks v. State, 159 Ala., 71 at page 84,
State v. Phillips, 109 Miss., 22, 69 So. 652,
State v. Certain Intoxicating Liquors (Utah), 172 P. 1050,
State v. Giaudrone (Wash.), 186 P. 870,
Fitch v. State (Neb.), 167 N. W., 417, 419,
West Virginia v. Adams Express Co. (C. C. A., 4th Cir. Ct.), 219 F. 794,
Frageser v. Gray, 73 Md., 250,
Crowley v. Christensen, 137 U. S., 87, 34 L. Ed., 620,
Crane v. Campbell, 245 U. S., 304, 62 L. Ed., 304.

The ultimate purpose of the eighteenth amendment was to prevent the consumption of intoxicating liquor as a beverage through the prohibition upon the various means by which it comes into existence and is acquired. The National Prohibition Act was enacted by Congres to effectuate the purpose of the amendment.

It is manifest, that in the absence of a specific provision in the statute authorizing it, that a construction placed upon the National Prohibition Act which would allow the 40,000,000 gallons of whiskey to be distributed direct from the bonded warehouses to the private dwellings of the United States on the ground that this liquor was possessed by the owners of these private dwellings before the law went into effect for the specific purpose of personal use, even though that purpose had not been set forth in the report of such liquors to the commissioner as required in Section 33 of the statute, is clearly in contravention with the plain purpose of this Act.

THE STATUS OF LIQUORS STORED IN A BONDED WAREHOUSE AS COMPARED WITH THE STATUS OF LIQUORS STORED IN A PRIVATE WAREHOUSE UNDER THE NATIONAL PROHIBITION ACT.—THE STREET CASE AND WHAT IT DECIDED.

The Street case is clearly distinguishable from the case at bar. In that case Street had bought his liquor prior to the enactment of prohibition and had it in a private storage warehouse for his own use. The only question to be decided was whether he could possess it outside of his home when he fulfilled all the other conditions of the law. The court held that it was in his possession and that he could transport it. The instant

cases present an entirely different set of facts. There is no provision of law which authorizes the withdrawal of liquor from a bonded warehouse for personal use, in fact, the provision relating to the bonded warehouse specifically states the places to which the liquor can be transported and the persons who can receive it. There is no provision there for taking it from the bonded warehouse to the home of the owner for personal use.

The decision in the Street case nowhere refers to Government bonded warehouses, the War Prohibition Act or Section 37 of the National Prohibition Act. The conclusion reached by the court was based upon exclusive possession, control and access to the liquor, or in other words, upon the nature of the possession. This is shown by the following language from the opinion of the court in that case:

> "By the admissions the appellant is lessee of the room in which the liquors are stored and he '*is in exclusive possession and control* of them.' Thereby the relation of the warehouse company to the liquors is restricted to the public function of furnishing such police, fire, and other protection to its buildings and their contents as the law or its lease require on the part of such company and to allowing the plaintiff to have access to his property in order that he may remove it for an admittedly lawful purpose. The company could not sell, give away or otherwise transfer the liquors to anyone other than in this limited way to the plaintiff owner." (Italics ours)

This decision in no way affects the removal or transportation of liquors stored in Government bonded warehouses. No one will claim that liquors in Government bonded warehouses are in the exclusive posses-

sion and control of the owner of the warehouse receipt. He cannot have access to them, his right to secure them is conditioned upon his fulfilling certain conditions with reference to the warehouse receipt as well as all of the conditions named in the prohibition statutes.

The right of the owner of the warehouse receipt to liquors is not paramount but is subordinate to the interest of the Government in them for the collection of the tax. This right of the Government attaches to such liquors from the inception of the process of manufacture and follows it through the various stages until the time the tax is paid and not until that moment can the individual citizen be said to be in exclusive possession of such liquors. That the right of the Government is superior in such cases is evidenced by the various provisions of the revenue laws as well as by decisions of the court construing them. As Judge McPherson said *In Re* Miller Pure Rye Distilling Company, 176 F. 606 at p. 609:

> "A distiller is required to provide at his own expense a warehouse in which nothing but spirits may be stored. The warehouse must have no doors or windows leading into the distillery or into any other room or building, and must be under the direction and control of the collector of the district, and in immediate charge of a storekeeper who is assigned to this duty by the Commissioner of Internal Revenue. In this warehouse the spirits may remain for eight years, but they may be withdrawn at any time during that period. 2 U. S. Comp. St., 1901, p. 2122. If the commissioner thinks the warehouse unsafe or unfit for use, he may require the distiller to provide another and to remove the spirits at his own expense. Id. 2123. THE WAREHOUSE IS

THEORETICALLY IN THE JOINT CUSTODY OF THE STOREKEEPER AND THE PROPRIETOR, BUT IN FACT THE CONTROL OF THE STOREKEEPER IS COMPLETE AND PRACTICALLY EXCLUSIVE. The lock is put on by the Government, and the key is in the storekeeper's possession. The warehouse must not be unlocked or opened or remain open except in the presence of the storekeeper or his lawfully designated representative, and no articles may be received or taken out except by the collector's order addressed to the storekeeper. Id. 2124. Any revenue officer at any hour of the day or night may enter the building to examine, gauge, measure, and take account of the spirits. Heavy penalties are denounced if his attempt to enter is obstructed by the distiller. Id. 2125. Immediately upon distillation, the spirits must be placed in the warehouse. Careful regulations provide what kind of packages may be used, and regulate their brands and stamps. Id. 2130, 2132. A formal entry that the spirits have been deposited in the warehouse must be made with the collector, the storekeeper and the commissioner, and a bond for the payment of the tax must accompany the entry. Id. 2133. Immediately after the tax has been paid, the spirits must be removed under penalty of forfeiture. Id. 2132. This removal is carefully guarded, and can only take place on the collector's order. Id. 2135, 2136. There are heavy penalites for removing spirits from the warehouse except as provided by law, and these penalities may be inflicted although no intent to defraud may exist. Id. 2136." (Capitals ours.)

The foregoing statements relate to distillery bonded warehouses. Equally as stringent regulations apply to general bonded warehouses. See Act of August 27, 1894. C. 349 (28 Stat., 564.)

While there is some variance in the decisions of the

courts as between the rights of creditors and holders of warehouse receipts for liquors there is unanimity upon the point that the interest of the Government therein is paramount and that there is no exclusive right of possession in the owner of such receipt such as was the fact in the Street case.

In re Miller Pure Rye Distilling Co., 176 F., 606,
Taney v. Penn. Nat'l Bank, 187 F., 689,
In re Roherer, 186 F., 997,
Pattison v. Dale, 196 F., 5.

The Circuit Court of Appeals, Third Circuit in the Taney case, 187 F., at page 699 said of the status of liquors under a warehouse receipt:

> "It is found as a fact in both cases, that the whiskey in question was in such bonded distillery warehouses of the United States, as above described, at the time it was pledged or sold as hereinbefore stated, and under the control and custody of the officers designated by law. That such control was exclusive, is apparent from the provisions of the law as above pointed out, and it seems like little less than absurd to say that the distiller was in possession of this property, when he could have been put in prison if he had attempted to take possession of it."

In the case of McCullough v. Large decided by the Circuit Court of Appeals of the Western District of Pennsylvania (20 Fed., 309) in an opinion which was concurred in by Mr. Justice Bradley, it was held:

> "Whiskey deposited in a bonded warehouse of the United States, and held therein for internal revenue tax due the Government, is virtually in the possession of the United States, and a sheriff

has no right to enter such a warehouse and seize, in execution, such whiskey as the property of the defendant in a writ of *fieri facias* in his hands, even though he may offer to pay the tax."

IN THE COLLECTION OF THE TAXES UPON LIQUOR THE GOVERNMENT DOES NOT LOOK TO THE OWNER OF THE WAREHOUSE RECEIPT NOTWITHSTANDING HE HOLDS THE EVIDENCE OF TITLE BUT RATHER TO THE DISTILLER AND THE SURETIES ON HIS BOND. SECS. 49 AND 54, ACT OF AUGUST 27, 1894 (28 STAT., 509). This is striking evidence of the fact that ther is no exclusive right of possession in the owner of a warehouse receipt such as existed in the Street case.

Warehouse certificates for bonded spirits form no part of the revenue system of the United States. Treasury Decision 1494.

Even stronger evidence than this is the fact that the Government has a first lien upon the liquor itself and for the non-payment of the tax or violation of the revenue laws the liquor is subject to seizure and forfeiture.

Hartman v. Bean, 99 U. S., 393; 25 L. Ed., 455,
United States Fidelity & Guaranty Co. v. U. S.,
220 F., 592.

The Attorney General of the United States, August 21, 1911, held that the purchaser of the warehouse receipt became the owner of the whiskey, "but without the right to remove it for beverage purposes except for export." This condition was one named in the War Prohibition Act, and so far as the Corneli case is concerned it clearly applies. By the same reasoning any provision in the National Prohibition Act or any other

law would prevent the removal of such liquor from the bonded warehouse.

The status of liquors held upon a warehouse receipt is for the foregoing reason wholly different from that of liquors purchased prior to the date when National Prohibition became effective stored in a private warehouse intended for personal use in the dwelling of the owner and reported to the commissioner as required by law, as was the fact in the Street case.

This Court was careful in its opinion in the Street case to restrict its decision simply to the facts as presented in that case, for it was said:

> "Without saying that there may not be other cases, the one at bar seems to be fairly within the scope of this obvious implication of Section 33."

There is also the further difference that the National Prohibition Act nowhere *expressly deals with liquors stored in a private warehouse.* The Court in the Street case considering this fact in connection with the provisions of Section 33 permitting the possession in the home of liquors acquired prior to the date the Act became effective held that the possession of such liquors in a private depository outside of the home was by implication a lawful possession within the exception created by Section 33, but when it comes to the status of liquors stored in bonded warehouses a different situation arises. It was with the problem of safeguarding the disposition of this vast quantity of liquors stored in bonded warehouses throughout the country that Congress specifically dealt. It was recognized that the successful enforcement of the law as well as the making effective the prohibition of the eighteenth amendment

depended upon restricting the distribution of this enormous accumulated stock of liquors to strictly non-beverage use. Hence Section 37 was inserted which explicitly provides the persons to whom and the purposes for which liquors in bonded warehouses may be disposed of. This court in the Street case points out that the custody of liquors by a private warehouse was not expressly prohibited for it is said:

> "It may be that the custody of liquors by a warehouse company was thus not declared to be unlawful because the writers of the Act did not have such a case in mind. * * * "

This is not true of liquors stored in bonded warehouses for Congress in Section 37 made specific provision for the disposition thereof which clearly negatives the contention made by the complainants in this case. The Street case dealing with an entirely different state of facts and liquor having an entirely different status under the National Prohibition Act is not controlling in this case.

Respectfully submitted,

WAYNE B. WHEELER,
Amicus Curiae.

FILED
MAR 28 1921
JAMES D. MAHER
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

CHARLES CORNELI,
Appellant,
vs.
GEORGE H. MOORE, Collector of Internal Revenue.
No. 174

GEORGE J. GHIO,
Appellant,
vs.
GEORGE H. MOORE, Collector of Internal Revenue.
No. 175

Appeals from the District Court of the United States for the Eastern District of Missouri.

Filed December 2, 1920.

MOTION TO ADVANCE APPEALS.

(27,989 and 27,990)

GLENDY B. ARNOLD,
ELLIOTT W. MAJOR,
Counselors for Appellants.

ST. LOUIS LAW PRINTING CO., 415 N. Eighth St. Bell, Main 1819.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1920.

CHARLES CORNELI, Appellant, vs. GEORGE H. MOORE, Collector of Internal Revenue.	No. 632.
GEORGE J. GHIO, Appellant, vs. GEORGE H. MOORE, Collector of Internal Revenue.	No. 633.

Appeals from the District Court of the United States for the Eastern District of Missouri.

Filed December 2, 1920.

MOTION TO ADVANCE APPEALS.

(27,989 and 27,990)

Now comes Charles Corneli and George J. Ghio, by Elliott W. Major and Glendy B. Arnold, counselors for said appellants, and move this Honorable Court to advance their appeals, cases No. 632 and 633, on the docket of the court, and make an order setting them for argument and submission together, on Mon-

day, the 25th day of April, 1921, or as soon thereafter as will be consistent with the business and convenience of the Court, and as reasons therefor appellants state:

These cases are brought to enforce and test the right of the appellants, each of whom is the bona fide owner of one barrel of distilled spirits, on deposit in Government Bonded Warehouses of the United States, to remove same to their respective private dwellings, in the City of St. Louis, Missouri, and which are used as dwellings only, and to keep the same in said dwellings for the personal use of each appellant, the members of his family and his bona fide guests when entertained therein, and for such said uses only, in said private dwellings, respectively, as is now authorized and permitted by the "National Prohibition Act"; and, the possession of said spirits is not desired for the purpose of barter or sale, or of disposing of the same in violation of any law of the United States.

There are many thousands of persons owning small quantities of spirits, in Bonded Warehouses of the United States, which, like appellants, were lawfully acquired for private consumption in their dwellings only, and who have been denied the right to take possession of their property and remove same to their private dwellings for lawful uses therein.

According to actual tests and common experience the "outage" on distilled spirits on deposit in Government Bonded Warehouses, by leakage and evaporation, is approximately two gallons or more per annum. The loss to each appellant and to those who own distilled spirits and who are similarly situated as appellants has already been very great, and no doubt will extend into millions of gallons before these appeals would be reached in their regular order on the docket of this court, and an early disposition of these appeals will minimize this great and irreparable loss to appellants and other lawful owners.

The appellants are being denied the right to the lawful use of their property, lawfully acquired; and, being denied the right to the lawful use and enjoyment of same, their property is, by leakage and evaporation, daily being wasted, destroyed and lessened in quantity (same being in barrels and not bottled); and having been on deposit in said Government Bonded Warehouses for some years prior to the adoption of the Eighteenth Amendment to the Constitution of the United States and the enactment of the Volstead Act, if appellants are not permitted to remove same and take possession thereof, at an early date, a large part of their property will have been wasted and destroyed and, in effect, confiscated.

In addition to these facts and reasons why these appeals should be advanced and argued and submitted together, the cases present questions of great public interest, and also affect the revenues of the Government of the United States. The questions presented by the particular facts in each of these appeals, relative to the removal by the owner of distilled spirits lawfully acquired, from the Government Bonded Warehouse to the private dwelling of the owner, to be used therein only as permitted and authorized by the "National Prohibition Act", should be specifically settled, and that at an early date, so as to save appellants and other owners similarly situated from great and irreparable property loss.

Respectfully submitted,

GLENDY B. ARNOLD,
ELLIOTT W. MAJOR,
Counselors for Appellants.

In the Supreme Court of the United States.

OCTOBER TERM, 1921.

CHARLES CORNELI, APPELLANT, *v.* GEORGE H. MOORE, COLLECTOR OF INTERNAL REVENUE for the First District of Missouri, respondent.	No. 174.
GEORGE J. GHIO, APPELLANT, *v.* GEORGE H. MOORE, COLLECTOR OF INTERNAL REVENUE for the First District of Missouri, respondent.	No. 175.
WILLIAM H. BRYAN, APPELLANT, *v.* JOSHUA W. MILES, COLLECTOR OF INTERNAL REVENUE for the District of Maryland, and Richard S. Dodson, Federal Prohibition Director for the District of Maryland, respondents.	No. 428.

SUPPLEMENTAL BRIEF FOR THE UNITED STATES.

It is with some hesitation that I venture to supplement the careful and, as I think, able brief of my associate, Assistant Attorney General Willebrandt, in the above-entitled cases.

It seems to me clear that these cases would probably never have been brought had not this court, in the case of *Street* v. *Lincoln Safe Deposit Co.* (245 U. S. 88) held that where an individual had lawfully purchased liquors for beverage purposes prior to July 1, 1919, and his supply was temporarily in a private storage warehouse, unconditionally subject to his control and to which he had access at any time for the purpose of removal, it was, in effect, as though he possessed them in his own home, and, on that account, could remove them thereto.

It is therefore only necessary to distinguish between the Street case and the instant cases to answer the contention of the plaintiffs, and this, in turn, involves the question whether there is any clear distinction between a Government bonded warehouse and a private warehouse.

In considering this question it may help the court if I describe with some particularity the exact nature of a Government bonded warehouse and supplement it by a brief statement of the pertinent statutes which prohibited the transportation or delivery of liquors, except under certain conditions and for certain purposes.

As showing the mischief that would be wrought in defeating the policy of the prohibition amendment and statutes, if the contention of the plaintiffs were to prevail, I also append a statement which the prohibition commissioner has given me, under date of December 1, 1921, and which shows the

amount of distilled spirits that were in Government bonded warehouses on June 30, 1921. It will thus appear that if the owners of these spirits can remove them from the warehouses to their homes for beverage purposes, a great volume of such spirits will thus be released, and, having regard to the widespread and reckless violation of the prohibition statutes, it is not difficult to predict that, in that event, much of this great reservoir of distilled spirits would never reach the homes, but would be diverted to bootleggers and other violators of the law.

The sections of the Revised Statutes herein referred to will be most conveniently found in the Compilation of Internal Revenue Laws of 1920, issued by the Treasury Department.

Section 3271, on page 222 of said compilation, provides that the distiller must provide at his own expense a warehouse to be situated on and constitute part of his distillery premises

> "and to be used only for the storage of distilled spirits of his own manufacture until the tax thereon shall have been paid * * *"

and

> "when approved by the Commissioner of Internal Revenue, on report of the collector, is hereby declared to be a bonded warehouse of the United States, to be known as a distillery warehouse, and shall be under the direction and control of the collector of the district, and in charge of an internal-revenue storekeeper assigned thereto by the commissioner."

Section 3274, Revised Statutes, page 224 of the compilation named, reads as follows:

> Every distillery warehouse shall be in the joint custody of the storekeeper and the proprietor thereof. It shall be kept securely locked, and shall at no time be unlocked, or opened, or remain open, unless in the presence of such storekeeper or other person who may be designated to act for him, as provided by law; and no articles shall be received in or delivered from such warehouse except on an order or permit addressed to the storekeeper and *signed by the collector having control of the warehouse.*

Under section 3260, Revised Statutes, as amended, pages 211 and 212 of said compilation, the distiller is required to execute a bond conditioned that he shall faithfully comply with the provisions of law relating to the duties of the business of distilling and shall pay all penalties incurred or fines imposed on him, and, under section 3293, as amended, pages 239, 240, and 241, of the compilation, the distiiler is required to give a warehousing bond monthly or annually (Form 80 or 359 as the case may be), conditioned

> "that the principal named in said bond shall pay the tax on spirits as specified in the entry, or cause the same to be paid, before removal from said distillery warehouse, and within eight years from the date of said entry, and the penal sum of such bond shall not be less than the amount of the tax on such distilled spirits."

Section 600–b of the revenue act of 1918, page 194 of said compilation, modifies the said section 3293, and authorizes the execution of a bond to enable the distiller to retain spirits in bonded warehouse after the eight-year period has expired.

Under sections 51 and 52 of the act of August 27, 1894 (28 Stat. 509), pages 247 and 248 of said compilation of 1920, provision is made for the establishment of general bonded warehouses. Section 51 provides in part:

> Each of which warehouses shall be in the charge of the storekeeper and gauger to be appointed, assigned, transferred, and paid in the same manner as such officers for distillery warehouses are now appointed, assigned, transferred, and paid. Every such warehouse shall be under control of the collector of internal revenue of the district in which such warehouse is located, and shall be in the joint custody of the storekeeper and proprietor thereof, and kept securely locked, and shall at no time be unlocked or opened, or remain open except in the presence of such storekeeper or other person who may be designated to act for him, as provided in the case of distillery warehouses; and such warehouses shall be under such further regulations as the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury, may prescribe * * *.

Each proprietor of a general bonded warehouse, or a special bonded warehouse, must give a bond conditioned on the proper protection and safeguard-

ing of the spirits deposited therein. Each distillery warehouse, general bonded warehouse, and special bonded warehouse provided for as herein indicated, as will be seen, is under the control of the collector of the district and in the joint custody of the Government officer and the proprietor, but, as a matter of fact, the storekeeper-gauger, who is employed and paid by the Government, carries the key to the Government lock on the door of each such warehouse, and the proprietor can not at any time have access to the warehouse except by permission of the storekeeper-gauger or officer having charge thereof. (See secs. 3271 and 3274, R. S., act of Aug. 27, 1894, and act of Mar. 3, 1877.) Spirits made from materials other than fruit produced at a distillery and stored in the distillery warehouse on the distillery premises may be transferred under a transportation and warehousing bond to a general bonded warehouse for storage therein. Brandy produced at a fruit brandy distillery may be likewise transferred under a transportation and warehousing bond for deposit and storage in a special bonded warehouse. The spirits are transferred untaxpaid under these bonds and the distiller in each case gives the transportation and warehousing bond.

In addition to thus providing warehouses under internal revenue laws, the proprietor of the distillery bonded warehouse or general or special bonded warehouse must procure a permit under Title II of the national prohibition act, and any removal of liquors from a distillery bonded warehouse to a general

bonded warehouse, or from a brandy distillery to a special bonded warehouse, must be pursuant to permit to purchase, Form 1410–A. The common carrier transporting the liquor must also have a permit to transport and can not deliver same to the consignee, in any case, except upon verified or sworn copy of such permit to purchase.

Under section 15 of the act of August 10, 1917, the importation of distilled spirits for beverage purposes was prohibited, and the manufacture of distilled spirits for beverage purposes was also prohibited thereby after 11 o'clock p. m., September 8, 1917.

Under the act of November 21, 1918, commonly known as the war-time prohibition act, the use of food or feed materials was prohibited on and after May 1, 1919, in the production of intoxicating malt and vinous liquors for beverage purposes, and the withdrawal of distilled spirits from Government warehouses after July 1, for beverage purposes was also prohibited except for export. This act also prohibited the sale of intoxicating liquors for beverage purposes after July 1, 1919. It will be observed, however, that although the withdrawal for beverage purposes, except for export, was prohibited after July 1, 1919, there was no prohibition in this or any other act on the transportation of intoxicating liquors for beverage purposes until the passage of the national prohibition act, which became effective in this respect on January 17, 1920. Thus any person who owned distilled spirits on warehouse receipts produced prior to September 9, 1917, deposited in

Government bonded warehouses, such as distillery, general and special bonded warehouses, might have had the same tax paid and withdrawn by the distiller thereof any time prior to July 1, 1919, for beverage or other purposes, and might freely have had the liquors transported to his residence for beverages or other purposes at any time prior to January 17, 1920.

Under section 3 of Title II of the national prohibition act it became illegal after January 17, 1920, to manufacture, sell, barter, *transport*, import, export, *deliver*, *furnish*, or *possess* any intoxicating liquor, except as authorized in the national prohibition act, and all the provisions of the act are to be liberally construed to the end that the use of intoxicating liquor as a beverage may be prevented.

In the case of *Street* v. *Lincoln Safe Deposit Company and Daniel L. Porter*, decided by the United States Supreme Court, the facts were that Street procured the liquors for beverage purposes when the same might legally be purchased prior to July 1, 1919. The liquors presumably were legally made, fully tax paid, had beverage status, were stored in the room or rooms in the warehouse building, under the exclusive control and right of entry of Street. Mr. Street might freely have removed those liquors at any time prior to January 17, 1920, to his residence for beverage purposes, without violating any law. Inasmuch as he did not thus remove them, Daniel L. Porter attempted to seize the liquors by reason of the fact that they were not in Street's residence

and had not been covered by a nonbeverage permit. Street resisted and carried the matter into the courts and, under the decision of this court, it was finally held that the removal of the liquors from such place of storage in the warehouse building to the residence of Street would not be such transportation as is prohibited by section 3 of Title II of the act, and the liquors were not forfeitable because not in Street's dwelling in the exact manner provided by section 33 of Title II of the national prohibition act.

It will thus be seen that there is little or no analogy between the liquors stored as herein indicated by Street, and liquors untaxpaid, stored in a Government bonded warehouse under the control of the collector of the district and joint custody of the storekeeper gauger representing him at the warehouse and the proprietor of the warehouse. Such liquors stored in a Government bonded warehouse, owned on warehouse receipts, could not have been legally withdrawn for beverage purposes after July 1, and be freely removed to the residence of the owner for beverage purposes after that date and prior to or after January 17, 1920.

The act of November 21, 1918, ran concurrently with the national prohibition act on and after January 17, 1921, until finally repealed by a joint resolution of Congress on March 3 or 4, 1921. While the act of November 21, 1918, is no longer in effect, it is clearly apparent that the distiller, or other person, may not under section 3 of Title II of the national prohibition act *furnish or deliver* the liquor

owned on any such warehouse receipt and a common carrier or the owner may not *possess, transport or deliver* such liquors now or at any time subsequent to January 17, 1920, for beverage purposes. Furthermore, the officials of the Treasury Department may not legally issue a permit, or authorize the issuance of a permit, to enable the distiller to deliver or furnish such liquor stored in bonded warehouses at this time or for common carriers or the owners to transport or possess same for beverage purposes.

There is submitted herewith a table showing the quantity of distilled spirits of various kinds in distillery and general bonded warehouses, brandy in special bonded warehouses and industrial alcohol in industrial alcohol bonded warehouses. It will be understood, however, that the alcohol in the industrial alcohol bonded warehouses was produced and deposited therein on and after May 1, 1920, under the provisions of Title III of the national prohibition act and regulations 61 issued pursuant thereto.

Respectfully submitted.

JAMES M. BECK,
Solicitor General.

DECEMBER 5, 1921.

APPENDIX.

TREASURY DEPARTMENT,
BUREAU OF INTERNAL REVENUE,
Washington, December 1, 1921.

The following figures show the amount of distilled spirits as known to trade remaining in distillery, general bonded, special bonded and industrial alcohol bonded warehouses on June 30, 1921:

[Statement in tax gallons.]

Distillery bonded warehouses:	
Whisky	37,254,400.8
Rum	395,156.4
Gin	791,250.9
High wines	1,654.5
Alcohol	207,656.7
Neutral or cologne spirits	321,451.5
General bonded warehouses:	
Whisky	2,707,543.0
Rum	4,262.7
Gin	94,662.0
High wines	516.1
Alcohol	433,289.4
Neutral or cologne spirits	47,555.2
Special bonded warehouses:	
Tax gallons brandy	641,558.1
Industrial alcohol bonded warehouses:	
Proof gallons alcohol	7,631,454.02

JAMES E. JONES,
Assistant Prohibition Commissioner.

○

FILED
DEC 14 1921
WM. R. STANSBURY
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 174.

CHARLES CORNELI, APPELLANT,

vs.

GEORGE H. MOORE, COLLECTOR OF INTERNAL REVENUE.

No. 175.

GEORGE J. GHIO, APPELLANT,

vs.

GEORGE H. MOORE, COLLECTOR OF INTERNAL REVENUE.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

No. 548.

WALTER A. EASTES, APPELLANT,

vs.

GEORGE F. CRUTCHLEY, COLLECTOR OF INTERNAL REVENUE, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

REPLY AND SUPPLEMENTAL BRIEF FOR APPELLANTS.

GLENDY B. ARNOLD,
ELLIOTT W. MAJOR,
Attorneys and Counselors for Appellants.

(27,989, 27,990, 28,503.)

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I.

Corneli and Eastes Cases.

In our reply brief we will first give consideration to the Corneli and Eastes cases, Nos. 174 and 548, because they are alike and with but one question involved in their considera-

tion, to wit, "transportation." The reply brief in the case of William H. Bryan *vs.* Joshua W. Miles, collector, *et al.*, No. 428, has already been filed by Bryan, Jones and O'Neill, attorneys in charge, and the arguments and answers to the briefs filed by the Assistant Attorney General, the Solicitor General, and Mr. Wheeler. *Amicus curiæ* in that case will also apply in these cases.

Section 37 of title II of the National Prohibition Act provides that—

> "Nothing herein shall prevent the storage in United States bonded warehouses of all liquor manufactured prior to the taking effect of this act or prevent the transportation of such liquor to such warehouses."

It is conceded by the Government that each of these two appellants lawfully acquired and owned their spirits prior to the effective date of the Eighteenth Amendment and the Volstead Act, Corneli having purchased his barrel in the spring of 1917 and Eastes in the summer of 1917; that they have been continuously since the purchase and are now the lawful owners of said spirits; that they are now lawfully stored; that each appellant desires to transport same from a lawful place of storage (general bonded warehouse) to another lawful place of storage or where same may be kept (dwelling of the owner), and that such spirits are desired to be used in such dwellings for lawful purposes only and as provided in section 33 of the National Prohibition Act.

The Government has utterly failed in its effort to distinguish these cases from the case of Street *vs.* Lincoln Safe Deposit Company, 254 U. S., 88, decided November 8, 1920. The admitted facts and circumstances in the instant cases

bring them squarely within the provisions and principles announced in the Street case. In fact, Corneli and Eastes occupy stronger positions than did Street, because there is no question but what these spirits are in lawful storage, whereas there was some question as to the storage being lawful in the Street case. Our "use," "possession," "keeping," "delivery," and "transportation," like that in the Street case, do not violate sections 3, 21, 25, or any other provision in the National Prohibition Act. Nowhere in the Volstead Act can a word or line be found prohibiting the removal of such lawfully acquired spirits from bonded warehouses to the home of the owner for lawful consumption therein by himself, his family, and his *bona fide* guests. There being no prohibition against it, nothing more is needed or required for its lawful removal.

The court said, in the Street case, that the first section of the Eighteenth Amendment "does not indicate any purpose to confiscate liquors lawfully owned at the time the amendment should become effective and which the owner intended to use in a lawful manner." Our spirits were "lawfully owned at the time the amendment" became effective, and it is admitted "the owners intended to use (same) in a lawful manner."

That the taking and removing of the spirits from the warehouses to the respective dwellings of Corneli and Eastes is not (in the language of the court) "a delivery of them within the meaning of this third section." And the court, further speaking, said, "that transportation of the liquors to the home of appellant, under the admitted circumstances, is *not such as is prohibited by* the section (section 3) is too apparent to justify detailed consideration of the many provisions of the

act inconsistent with a construction which would render such removal unlawful."

The Eighteenth Amendment does not prohibit the personal "use" or consumption of spirits by the owner, and the court said that "Congress was concerned with the great problem of preventing the manufacture and sale of intoxicating liquors for beverage purposes in the future."

The reasons advanced by the Government in its brief as to why appellants are not entitled to the relief for which they pray are as follows:

A.

"THAT A PERIOD OF SEVEN MONTHS AFTER THE PASSAGE OF THE WAR-TIME PROHIBITION LAW WAS GIVEN TO OWNERS LIKE CORNELI TO REMOVE THEIR SPIRITUOUS LIQUORS FROM DISTILLERIES AND BONDED WAREHOUSES TO THEIR HOMES, AND THIS COMPLAINANT REFUSED AND NEGLECTED TO DO AND NOW HE SEEKS TO READ INTO THE LAW AN INTERPRETATION FATHERED BY A DESIRE TO CURE HIS OWN NEGLECT."

1. The Government has entirely missed the way, forgotten dates, and misread the War Time Act. The War Time Prohibition Act was an emergency and temporary law and prevented the sale of liquors for beverage purposes during its life and also prevented the withdrawal of spirits from bond for beverage purposes during its life. It did not give owners seven months to withdraw spirits from bond for beverage purposes or require them to do so under penalty of forfeiture. The Congress gave this time to those in the business to sell their spirits out of bond, and thereafter sealed the balance in bond for beverage purpose until demobilization took place.

etc. The policy of the Government was to keep same in bond, and not permit their withdrawal for beverage purposes during this temporary time only. Appellants adopted the policy of the Government and by their action neither lost nor forfeited any rights whatever, and the law itself visited none. They relied on the fact and right they could withdraw when War Time prohibition ended.

2. The War Time Prohibition Act was passed November 21, 1918, just ten days after the signing of the armistice, but was not effective until June 30, 1919. The Eighteenth Amendment to the Federal Constitution was ratified by a sufficient number of States January 16, 1919, but the Amendment did not become effective until January 16, 1920. The Eighteenth Amendment did not prevent the withdrawal of such spirits from bond and indeed was not yet effective. The Volstead or National Prohibition Act had not been passed and no reason to believe or presume it would ever be introduced or passed, and certainly that no act would be passed undertaking to interfere with the appellants' rights of withdrawal.

So when War Time prohibition, a temporary act, became effective June 30, 1919, the Eighteenth Amendment was not in effect and the Volstead Act had not been passed, and when it did pass later and on October 28, 1919, it did not become effective until January 16, 1920. After the War Time Prohibition Act became effective, it extended into the National Prohibition Act, in fact, the War Time Prohibition Act was in force until repealed, March 3, 1921. We were prevented from withdrawing our spirits from bond for beverage purposes *by the War Time Prohibition Act* and *not by the Volstead Act.*

3. There is no provision of any law whereby we have lost or forfeited our right to withdraw and certainly no act done estopping appellants from asserting their rights and securing their relief. It was expected the War Time Prohibition Act would terminate before the National Prohibition Act became effective. We had no chance to withdraw our spirits. Appellants relied on the fact they were prohibited from such withdrawal during the life of *War Time prohibition only*, and on its termination could withdraw same for said lawful purposes and uses.

B.

"THAT APPELLANTS FAILED TO REPORT WITHIN TEN DAYS AFTER THE EIGHTEENTH AMENDMENT BECAME EFFECTIVE 'THE KIND AND AMOUNT OF INTOXICATING LIQUORS IN THEIR POSSESSION.'"

This is a most astounding position.

1. We had not withdrawn our spirits from bond and could not because of the War Time Prohibition Act. The requirement as to making a report in the Volstead Act was for liquors *out of bond* and in the possession of the owners (sec. 33, title II, Volstead Act).

2. The Commissioner to whom the Government in its brief says we should have reported, had complete records and knew our spirits were in the bonded warehouse over which he had joint control with the proprietor. A report would have been an absurdity.

3. We had legal title and constructive possession, but the property was on legal deposit in the bonded warehouse, over

which the Government had joint control with the proprietor and had a key to the building. Spirits possessed *out of bond* were reported and not spirits possessed *in bond*.

4. Mr. Wayne Wheeler, in his brief, says we were never in possession. He cites McCullough *vs.* Large, 20 Fed., 309, and quotes as follows:

> "Whiskey deposited in a bonded warehouse of the United States, and held therein for internal revenue tax due the Government, is virtually in the possession of the United States."

5. Thus the Government in its brief and also our esteemed "*amicus curiæ*" blow hot and cold. They say we should have reported the liquor under section 33 of the Volstead Act because we were in possession of the spirits and, therefore, having failed to so do, have forfeited our rights, although, if we were in such possession as there contemplated, the law provides no forfeiture. Then they say we are not within the provision of the Street case because the spirits were never in our possession, no matter if the Government did arbitrarily refuse to accept the tax of $6.40 per gallon and let us take physical possession and remove from bond to our homes.

6. We speak of the liquor as being in a Government bonded warehouse; that simply means it is a warehouse, privately owned, private property. The owners charge for storage and in some instances for insurance where the owners of the spirits do not cover same themselves. The proprietors and owners of these bonded warehouses are now making increased charges for storage and guarding spirits on deposit. The Secretary of the Treasury, Hon. A. W. Mellon, calls at-

tention to this fact by a letter or document printed in the *Congressional Record* of November 4, 1921, at page 8119.

The only interest the Government has in these distilled spirits is to collect the tax on same, and this tax is a lien on the property (spirits) for which the warehouseman gives bond, and hence these warehouses are referred to as bonded warehouses.

The Assistant Attorney General in her brief erroneously states that these warehouses are Government institutions and seems to have the idea they are owned and controlled by the Government. These warehouses are provided for by statute and they are all privately owned.

Appellants are the owners of the spirits they have on deposit in these warehouses and are in the constructive possession of same, as this Court decided in Gibbons *vs.* Stevens, 8 How., L. C., 399.

The proprietor is the "bailee" of appellants for hire, and possesses same for them, and they are held and stored subject to payment of the tax on removal. The proprietor of the warehouse gives the warehouse receipt for the spirits and in which the amount of charge per gallon for storage is fixed and which constitutes the storage contract between the proprietor and the owner of the spirits.

C.

"THAT APPELLANTS UNDER SECTION 6, TITLE III, OF THE VOLSTEAD ACT MAY TAKE OUR SPIRITS FROM BOND AND DENATURE SAME."

That does not answer anything or meet any issue in the case.

1. We may do this if we wish. It is a privilege of which we may avail ourselves. It is a mere directory provision, "may."

2. If this provision were mandatory, "shall," then it would violate the Fifth and Eighteenth amendments and be out of tune with the other provisions of the Volstead Act and out of harmony with the principles in the Street case.

D.

"THAT BECAUSE OF THE STATEMENT OF THE ASSISTANT PROHIBITION COMMISSIONER AS TO THE AMOUNT OF SPIRITS IN BOND AND APPENDED TO SOLICITOR GENERAL BECK'S BRIEF, A GREAT RESERVOIR OF SPIRITS WOULD BE RELEASED IF CORNELI AND EASTES AND BRYAN, APPELLANTS, CAN REMOVE THEIR SPIRITS TO THEIR RESPECTIVE HOMES. THE SOLICITOR GENERAL SAYS FURTHER: "MUCH OF THIS GREAT RESERVOIR OF DISTILLED SPIRITS WOULD NEVER REACH THE HOMES, BUT WOULD BE DIVERTED TO BOOTLEGGERS AND OTHER VIOLATORS OF THE LAW."

1. This is not intended as an argument, legal, equitable or otherwise. It is used as a "bogey man." When we consider constitutional questions and property rights, the "bogey man" has no place and deserves no thoughtful consideration.

2. Those similarly situated as Corneli and Eastes and who bought for themselves a barrel or two for future consumption are few perhaps.

3. There may be others similarly situated, but of such a fact there is no presumption in law or equity. The number

and amount are bound to be limited, but all this is beside the question.

4. The Solicitor General says that in transit from the warehouse to the home the bootlegger and other violators will get a large part of it. That is an advocacy that people must be denied their legal and equitable rights, because the administrative machinery might possibly break down.

5. The Bureau of Internal Revenue, as this Court said in the Street case, has administrative power and authority to provide for the transportation from the warehouse to the home. I have faith in the efficiency and integrity of the Bureau of Internal Revenue. It can send its agents along to see that such spirits safely and honestly reach the homes of the owners. So this borrowed fear is imaginary and mere "moonshine."

6. He says there are 40,000,000 gallons of all kinds of spirits in bond. How much of this was manufactured and legally acquired before the effective date of the Eighteenth Amendment, and held and owned in the way and manner held and owned by appellants, no one is or can be advised. This, however, in nowise affects appellants in their legal rights. Just say, for the sake of argument, all of it would go to the homes. The tax is $6.40 per gallon. That would give the Government a total revenue of $256,000,000—money in, not money out.

7. From an economical, financial and good Government standpoint, the great masses, including those for and those against prohibition, had rather see the $256,000,000 in the Treasury and the spirits in the homes of the lawful owners

and the bootlegger out of business than for such spirits to remain in bond. They had rather see the Government get the revenue than to see the bootlegger flourish like a "Green Bay Tree." The $256,000,000 will relieve that much indebtedness and, to that extent, relieve the people of their many heavy and excessive burdens of taxation; relieve the enforcement officers of much useless and unnecessary worries and bring about an earlier end to the use of spirits as a beverage, and that legally.

We made application to the collector in the proper districts for the withdrawal of our distilled spirits, lawfully acquired and owned before the effective date of the Eighteenth Amendment and of the National Prohibition Act, and also tendered to the collector of the district where deposited the tax of $6.40 per proof gallon, same being the proper tax and amount due the Government, and such collector should have issued his order to the storekeeper of the respective warehouses, where our spirits were on lawful deposit for the delivery, and as provided in section 3294 R. S., which is section 6036, United States Compiled Statutes 1916, reading as follows:

> "Any distilled spirits may, on the payment of the tax thereon, be withdrawn from the warehouse on application to the collector of the district in charge of such warehouse on making a withdrawal entry in duplicate and in the following form: (Here follows the form of the entry), and on payment of the tax, the collector shall issue his orders to the storekeeper in charge of the warehouse for the delivery."

II.

The Eighteenth Amendment Is Prospective in Its Operation and Our Spirits Are Property.

That the Eighteenth Amendment is prospective in its operation and does not apply to liquors manufactured and lawfully owned prior to its effective date is certain. We here advance some of the reasons.

(*a*) Because of the rule of law that all amendments are prospective, "unless on the fact of the amendment a contrary intention is manifest beyond reasonable quetsion" (Shreveport *vs.* Cole, 129 U. S., p. 36).

(*b*) Because Congress in sections 33 and 37 of title II of the National Prohibition Act has twice construed it as prospective.

(*c*) Because this Honorable Court in Street *vs.* Lincoln Safe Deposit Company has construed it as prospective and further said that section 33, title II, of the Volstead Act applied to liquors manufactured and lawfully acquired before the effective date of the act.

(*d*) Because any other construction would bring the Eighteenth Amendment in conflict with the Fifth Amendment or bring about a construction rendering the Volstead Act invalid in this respect.

(*e*) Because Congress in public document passed November 23, 1921, amended subdivision (*a*) of section 600 of the Revenue Act of 1918, relating to the "Tax on beverages, etc.," so as to require the payment of $6.40 per proof gallon

on liquors removed from bond and used for beverage purposes.

These points we will fully argue and present in the case of George J. Ghio *vs.* George H. Moore, collector, No. 175, found in the later pages and part of this reply brief.

That spirits lawfully owned prior to the effective date of the Eighteenth Amendment and the National Prohibition Act are property is no longer open to question, and neither the amendment nor the act has prevented their use in the home of the owner for beverage purposes nor their transportation thereto from any lawful place of storage.

III.

Congress Has in the National Prohibition Act Authorized the Use of Spirits Lawfully Owned Prior to Its Effective Date for Beverage Purposes in the Home of the Owner and Has Authorized Its Transportation to the Home of the Owner for Such Purposes.

1. Section 33, title II, of the Volstead Act authorizes the use of spirits as a beverage in the home. This Court in the Street case said it applied to liquors lawfully owned prior to the effective date of the amendment and the act. That such liquors can be used as a beverage in the home cannot be questioned. The place of storage is of no moment, just so the same is lawfully stored.

2. Section 37, title II, of the Volstead Act, hereinbefore set out, authorizes *"All liquors manufactured prior to the taking effect of this act"* to be stored in United States bonded warehouses. Our liquors were manufactured prior to the taking effect of the act, *and this is the only require-*

ment or limitation, and they are, therefore, now lawfully stored and possessed. One can remove such liquors from his home and so store same and transport same back again. The Government is not attempting to deceive and to trap its citizens. The section authorizes "*transportation of such liquors to such warehouses,*" and of course under the same power or authority can retransport same to the home.

So here we have specific legislative authority and sanction to "*use*" such liquors in the home of the owner for beverage purposes; we have specific legislative authority and sanction to "transport" such liquors manufactured prior to the effective date of the Volstead Act from the home to the general bonded warehouses for purpose of deposit and the certain implied power and right to retransport same to the home. This section was not enacted for a piece of deception or to practice a deceit and entrap the citizen as to his property. Certain it is, further, there is no prohibition against such "transportation."

These cases are within the National Prohibition Act and within the principles announced and the construction given in the case of Street *vs.* Lincoln Safe Deposit Company. The amendment is prospective in its operation and any one of these reasons is sufficient and nothing more need be said.

IV.

The Ghio Case, No. 175.

We contend in this case that the Eighteenth Amendment, when properly construed, does not take from the owners of liquor, lawfully acquired before its effective date, the legal

right to thereafter sell it for a beverage purpose, nor does it give Congress the power to do so. We are not concerned here about the power of the people by constitutional amendment to take from such owners of liquor their right to sell it after the effective date of the amendment. We are merely trying to determine whether the people have exercised that power.

If the amendment makes unlawful the sale of liquor lawfully acquired before its effective date, then it must be held that its intended effect is to destroy vested rights in existing private property. That means confiscation pure and simple without pretense of compensation. The only possible way that a constitutional amendment can be made to strike down vested rights in property is by inserting in it an express declaration to that effect or by judicial construction. Such an amendment then becomes a retrospective law. It must be conceded that there is no express declaration contained in this amendment making it retrospective in its operation. If it is to have that effect, then it must be by the judgment of this Court.

When a constitutional amendment does not contain an express retrospective declaration, the legal presumption is that its framers did not intend that it should have a retrospective effect, and this is true notwithstanding the fact that the wording of the amendment appears to have that effect. Most of our written laws in derogation of existing property rights are susceptible of a retroactive operation, but they are never so construed unless it appears beyond a reasonable doubt that they were so intended. There is no principle of law which has received such universal sanction in this country and England as that which forbids the courts to construe

statutes affecting vested rights so as to give them a retroactive effect. It is usually forbidden by the due-process clauses of the constitutions of all the States and of the United States. Many of the States have regarded retrospective laws, and hence retrospective construction, as so offensive to a decent sense of justice that they have expressly forbidden, by their constitutions, the enactment of such laws. Of course, such constitutional provisions are absolute prohibitions against retrospective construction by the judicial power.

Lewis, in his revision of Sutherland's work on Statutory Construction, lays it down, as the sum of the adjudicated cases, of which he cites a most voluminous number, that a statute will never be given a retroactive operation "unless the language employed in the enactment is so clear it will *admit of no other construction.*" "It is always presumed," says this author, "that statutes were intended to operate prospectively and all doubts are resolved in favor of such a construction," and "that these same rules apply to constitutional provisions." This Court, back in its early history, has declared as "sacred" the principle "that laws by which human action is to be regulated look forward, not backward, and are never to be considered retrospectively unless the language of the act should render that *indispensable.*" In this same case the court denounces as "odious" a construction which gives an act a retroactive effect. (See Reynolds *vs.* McArthur, II Peters, 417, 437, and Ladiga *vs.* Rowland, II How., 581, 589.)

It is axiomatic that lawmakers know the law. This Court will conclusively presume that Congress knew and has always known of the existence of this old and familiar rule which forbids the courts to give its enactments a retroactive

operation. If it be conclusively presumed that Congress knew of this rule and had it in mind when it framed the amendment, is not that fact all but conclusive proof that Congress also knew and intended that it should be applied in the construction of this amendment. Especially is this true when it is not made to appear that a contrary construction is "*indispensable*" to the efficacy of the amendment.

The method by which Congress, in framing the amendment, has undertaken to accomplish prohibition shows, beyond doubt, that the survival of the right, under the reasonable regulations already prescribed, to sell the liquor in bond at the effective date of the amendment will not render its provisions nugatory or deprive the amendment of its efficacy. The decision of this Court in the Street case, the rulings of the Commissioner of Internal Revenue, and section 33 of the Volstead Act show conclusively that Congress intended that the people should have the lawful right to consume the immense stocks of liquors on hand at the effective date of the amendment. These facts further show that Congress did not intend to attempt to bring about complete prohibition until those stocks of liquors were consumed. If this contention is sound, then it naturally follows that permitting the sale for beverage uses of liquors now in bond will not destroy the efficacy of the amendment but will rather be in aid of it. Put in another way, the framers of the amendment have manifested a clear intention that the amendment should have a prospective operation from and after its effective date. This construction is strongly sustained when we take into account the facts and circumstances confronting Congress when it framed this amendment. Congress cannot be convicted of an intent to needlessly destroy hun-

dreds of millions of dollars worth of property except upon proof of such intent beyond a reasonable doubt.

V.

According to a statistical abstract of the United States for the year of 1919, published by the Bureau of Foreign and Domestic Commerce of the Department of Commerce, there was being consumed annually in the United States at the time this amendment was framed more than two billion gallons of intoxicating beverages. In 1914 the country consumed more than two billion two hundred and fifty million gallons of these beverages. Of course, the production kept apace of the consumption. This report shows that during the six years immediately preceding the effective date of the amendment we produced 371,261,868 gallons of distilled spirits alone more than was consumed during that period of time. While during the period which followed our entry into the World War both the production and consumption of these liquors were greatly reduced, yet that unexpected result was unknown and consequently not considered by Congress at the time it had agreed upon the first and second sections of this amendment. Congress, knowing that our annual consumption of these beverages amounted to more than two billion gallons, undoubtedly framed this amendment in anticipation of there being hundreds of millions, if not billions, of gallons of them in existence at the effective date of the amendment. Another important matter which Congress undoubtedly took into consideration is that the Government was levying and collecting annually, prior to our entry into the war, more than two hundred and fifty million dollars as taxes upon intoxicating

beverages. The Annual Report of the Commissioner of Internal Revenue for 1921, at page 8, shows that the Government received from this source during the fiscal year which ended nearly six months *after* the ratification of the amendment the enormous sum of $483,050,854.47. May we not assume that Congress knew that these immense stocks of liquors were and would be made for but one purpose, and that was to be sold for beverage uses; that aside from their use as beverages they had no other substantial value. Moreover, there was to be considered the incalculable loss, without the hope of compensation, to be inflicted as a consequence of prohibition by the partial destruction of the properties used in the manufacture and distribution of these beverages which was not to be avoided.

With these circumstances confronting Congress, how was it to accomplish prohibition? Was it to be done immediately or gradually and by degrees? There were but these two ways open to Congress, but either was bound to be followed by losses beyond reckoning. But immediate prohibition meant the useless destruction of existing property. Immediate prohibition was to be accomplished merely by inserting a declaration to that effect in the amendment, and when that was done the drinking of intoxicating liquor would have immediately become unlawful upon the effective date of the amendment. But the immense stocks of these liquors which were bound to be in existence at that date would have been all but destroyed. This would have been a wanton, and hence useless, destruction of private property. We think these considerations strongly reinforce the legal presumption that the amendment was not intended to be retroactive.

VI.

The wording of the amendment shows that Congress intended to avoid confiscation, because the amendment does not make unlawful the consumption of those intoxicating liquors, as beverages, which were manufactured prior to the effective date of the amendment. There is great significance in this fact. By the enactment of section 33 of the Volstead Act, Congress has construed the amendment as not giving it the power to make unlawful the consumption of intoxicating liquors as beverages which were manufactured prior to its effective date. If it were given such power, then section 33 is in direct violation of the amendment, because that section expressly authorizes the consumption of such liquors. The avowed purpose of the amendment is to put an end to the use of intoxicating liquors as beverages. If it was intended by the framers of the amendment that this end should be accomplished immediately upon its effective date, then Congress would have been given the power to make it unlawful to drink intoxicating liquors as beverages manufactured before the effective date of the amendment as well as afterwards. That it is given the power to prohibit the drinking of such beverages manufactured after the effective date of the amendment cannot be denied, but by withholding from Congress the power to apply this prohibition to liquors manufactured before the taking effect of the amendment shows that, so far as the drinking of those liquors is concerned, the amendment was not to have a retroactive effect. This Court in the Street case, has held, in effect, that the amendment, in one of its most important prohibitions, is not to have a retroactive effect. That decision

must now be considered as a part of the amendment. The amendment expressly prohibits the transportation of intoxicating liquors for beverage purposes. Such liquors manufactured prior to the effective date of the amendment are as much within the apparent meaning of the terms of this prohibition as those manufactured subsequently, yet the court has held that the transportation of liquors manufactured prior to its effective date from a place of lawful storage to the dwelling of the owner for personal consumption is not prohibited by the amendment. The Commissioner of Internal Revenue has made a like ruling, permitting the transportation of intoxicating liquors for beverage purposes from one *bona fide* dwelling of the owner to another *bona fide* dwelling of such owner. Certainly if John Doe changes his residence from New York city to Washington city and ships his private stock of liquors from New York to Washington, that is a transportation of intoxicating liquors for beverage purposes, yet such transportation is held not to be in violation of the amendment. Do not these rulings of the court and the Commissioner of Internal Revenue show that the amendment was not intended to have a retroactive operation in respect to one of its most important prohibitions? If the amendment is not to be construed retroactively so as to prohibit the transportation of intoxicating liquors manufactured prior to its effective date, where is the sense or logic in holding that the prohibition against the sale of such liquors shall have a retroactive effect? To hold that the prohibition against the sale of intoxicating liquors shall be given a retroactive effect, and that the prohibition against transportation shall not be given such effect is to recast the amendment.

The reason given by the court, in the Street case, for declining to apply the prohibition contained in the amendment to the transportation of the liquors, in that case, is that such ruling would result in confiscation of those liquors. Congress, in framing the amendment, refrained from giving it power to prohibit the consumption of liquors as beverages for the evident purpose of avoiding confiscation of liquors manufactured prior to its effective date. Why will not the same reasoning sustain, with equal force, a like ruling as to the prohibition against the sale of liquor? We think that what we have said shows that the amendment was not intended to prohibit the sale of intoxicating liquors for beverage purposes manufactured prior to its effective date. But that is not all.

The Eighteenth Amendment is only part of a constitution containing many provisions, and in construing it other provisions of the same instrument, which have any bearing upon the subject, shall also be taken into account. The Eighteenth Amendment gives Congress the power to prohibit the sale of intoxicating liquors for beverage purposes. The Fifth Amendment contains an express limitation upon the power of Congress which forbids it to enact any law which shall deprive any person of his property without due process of law. Did the framers of the Eighteenth Amendment, in giving to Congress the power to prohibit the sale of intoxicating liquors for beverage purposes, intend to repeal the limitation upon the power of Congress contained in the Fifth Amendment? If the power vested in Congress by the Eighteenth Amendment to prohibit the sale of liquor is to be exerted against its sale when manufactured prior to the effective date of the amendment, then does not the Eight-

eenth Amendment to that extent repeal the limitation upon the power of Congress contained in the Fifth Amendment? Repeals by implication are not favored in the law and are never to be presumed unless it is "imperatively required." This Court has held, in Texas & P. R. Co. *vs.* Abilene Cotton Oil Co., 204 U. S., 426, 427, that the repeal of a statute by implication cannot be sustained "unless that result is imperatively required; that is to say, unless it be found that the pre-existing right is so repugnant to the statute that the survival of such right would in effect deprive the subsequent statute of its efficacy; in other words, render its provisions nugatory." We do not believe that the survival of the right to sell the liquor now in bond would have that effect upon the Eighteenth Amendment.

Certainly it will be conceded that if the owners of liquors manufactured prior to the effective date of the Eighteenth Amendment are now denied the right to sell those liquors, then that is a deprivation of property. The destruction of property rights by legislative enactment is a deprivation of property. The right to sell property is property as much so as the right to possess, use, and enjoy it. A legislative enactment which takes away this right is a deprivation of property. This was expressly held by this Court in Buchanan *vs.* Warley, 245 U. S., 60, 74. This Court has always held that liquor is as much the subject of property, within the meaning of the term as used in the Fifth Amendment, as the sugar of Louisiana, the cotton of South Carolina, the hops of Washington, the tobacco of Maryland and Connecticut, the products, natural or manufactured, of any State, and are so "recognized by the laws of Congress, the decisions of courts, and the usage of the commercial world." Lyng *vs.* Michigan, 135 U. S., 161.

When we consider that Congress knew and intended that the established rules of constitutional construction would be applied to the amendment, and that an application of those rules would give the amendment a prospective operation, and that to give the amendment a retroactive effect would not only destroy hundreds of millions of dollars' worth of property, and thereby inflict untold loss upon innocent people, and that such a result would be to violate the spirit, if not the letter, of the Fifth Amendment, the conclusion is irresistible that Congress did not intend that the Eighteenth Amendment should be so construed as to take from the owners of liquor manufactured prior to its effective date the lawful right to sell those liquors.

VII.

The contention we have been making against retroactive construction is in nowise impaired by the existence of the postponement clause of the Eighteenth Amendment. That clause was not inserted in the amendment as a rule of construction or as an aid in construing the amendment. It has performed its office, is now a dead letter, and therefore has no present meaning. It meant nothing in the beginning except that the effective date of the amendment was postponed one year. The specific reasons which impelled Congress to put off the effective date of the amendment can never be known, but whatever they may have been, they now have no effect upon the meaning of the amendment. It is to be construed now as it would have been had its effective date not been postponed.

If the court sustains our contention that the Eighteenth Amendment shall not be construed so as to prohibit the sale

of liquors lawfully manufactured and owned at this effective date, then it follows that Congress has not the power to prohibit such sale and the Volstead Act will not be so construed by the court if it can be given a reasonable construction to the contrary. In our original brief, in Ghio's case, we have undertaken to show that the Volstead Act not only does not prohibit the sale of such liquor, but permits and regulates it. Under this circumstance, we will not reiterate what we have said on this point in the original brief.

We respectfully submit that the decrees in these cases should be reversed and the cause remanded to be tried in accordance with the opinion and views of this Court.

GLENDY B. ARNOLD,
ELLIOTT W. MAJOR,
Attorneys and Counsellors for Appellants.

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